

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:ILD:CHI:TL-N-2674-99
RAVillageliu

date: June 14, 1999

to: Chief, Examination Division, Illinois District
Case Manager Gilbert Drucker
Attention: Team Coordinator [REDACTED]

from: District Counsel, Illinois District

subject: AO: [REDACTED] consents
Taxpayer: [REDACTED] - [REDACTED] 1120
Taxpayer 2: [REDACTED] - [REDACTED] 1120

Non-Docketed Large Case Opinion: CEP.¹

This opinion pertains to two different domestic corporate taxpayers, [REDACTED] and [REDACTED], controlled by the [REDACTED].

Facts

There are three documents purporting to support the authority of [REDACTED] in his capacity as [REDACTED] and [REDACTED] in his capacity as [REDACTED] and [REDACTED], to bind [REDACTED] and [REDACTED], respectively, in tax matters.

The first document signed by [REDACTED] certifies that [REDACTED] was elected [REDACTED] on [REDACTED] and has responsibility for the company's tax

¹ This opinion is that of the office of District Counsel, Illinois District based on well-established legal authority and office position. It has not been pre-reviewed by the national office, prior to its being issued. As this is a CEP case, a copy of this opinion is being sent to the national office for coordination purposes. Were this to result in any modifications or recommendations, you will be informed. We will do this by supplemental memorandum, where this is appropriate or necessary. Otherwise, we will let you know by a simple telephone call.

matters. The second document, signed by [REDACTED]², certifies that [REDACTED] holds the office of [REDACTED] and [REDACTED] of [REDACTED], and has responsibility for the company's tax matters. The third document, signed by [REDACTED] authorizes [REDACTED] to handle tax matters related to [REDACTED].

As these documents purport to grant [REDACTED] authority to bind both [REDACTED] and [REDACTED], in tax matters, the taxpayer(s) request that [REDACTED] sign the statute extensions for the [REDACTED] tax year and the [REDACTED] tax year.

FACTS

The issues are, as follows:

1. Whether [REDACTED], in his capacity as [REDACTED], of [REDACTED], has authority to execute a Form 872 on behalf of the taxpayer, [REDACTED].

Answer and Legal Analysis: Yes. The power to consent to delayed assessment is within the ordinary functions of a corporation and the ordinary powers of its general officers, requiring no express authorization from the board of directors. See National Water Main Cleaning Co. v. Commissioner, 16 BTA 223 (1929); Liberty Baking Co. v. Heiner, 37 F2d 703, 8 AFTR 10011, 2 USTC ¶ 463 (3rd Cir. 1930); Athens Roller Mills v. Commissioner, 46 BTA 1012 (1942), rev'd on other issue, 136 F2nd 125, 31 AFTR 101, 43-1 USTC ¶ 9463 (6th Cir. 1943). Therefore, the Service is not required to insist on seeing an actual Board of Directors resolution granting [REDACTED] the authority to sign a consent for the corporation, and the Service is not required to demand a copy of the corporation's by-laws to make its own interpretation of [REDACTED]'s authority to act for the corporation under those by-laws, before it will accept a consent signed by [REDACTED]. However, there is nothing that says that the Service can not ask to see these, if this will make Examination more comfortable and taxpayer is willing to cooperate.

A person or persons authorized to sign a corporate return can sign a waiver, Form 872. A corporation's income tax return must be signed by one of the following officers: the president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to so act.

² [REDACTED] is the [REDACTED] of [REDACTED].

(**EMPHASIS ADDED**). I.R.C. § 6062. Based on the representations of the taxpayer's corporate secretary, [REDACTED] would have this authority. [REDACTED] is the corporate officer of the taxpayer, [REDACTED], who is expressly authorized to act for the taxpayer with respect to tax matters. This is verified by the [REDACTED] of [REDACTED], who certifies that [REDACTED] is the [REDACTED], and further certifies that, in such capacity, and in accordance with the authority granted to officers of the Company under the Company's By-Laws, has responsibility for tax matters relating to the Company. We see no reason why the Service can not reasonably rely on these representations that have been made by the proper corporate official.

Of course, if you ask the taxpayer to provide you with a copy of the By-Laws or a Board of Directors resolution, if it exists, and they are happy to give it to you, that would be ideal. But we do not consider the receipt of a supporting Board of Directors resolution to be necessary, given the case law already cited and the certification that you already possess; nor do we believe that the Service has a duty to go behind a corporate secretary's certification that the corporation's tax officer has authority under the corporation's by-laws to act on tax matters, in a case such as this one, where there is no evidence of irregularities.

It follows, that in our opinion, if you choose to do so, you can accept a consent for [REDACTED] and its consolidated return group, signed by [REDACTED], without risking alienating the taxpayer, by demanding further information with regard to his authority to act in tax matters. Given that [REDACTED] has been certified as a corporate officer with authority to act on tax matters, by a proper corporate official of the taxpayer, it is our legal opinion that the Service can reasonably rely on the information which has already been provided. There is no reason to require to see the actual corporate By-laws, or to require to see an actual Board of Directors resolution, before you can accept [REDACTED]'s authority to act for [REDACTED], with respect to tax matters.

2. Whether [REDACTED], in his capacity as [REDACTED] and [REDACTED], of [REDACTED], has authority to execute a Form 872 on behalf of the taxpayer, [REDACTED].

³ [REDACTED] as the consolidated return group parent, is the agent of the consolidated return group for tax purposes.

Answer: Yes.- The same analysis applies to [REDACTED]'s authority to act for [REDACTED] that applied to [REDACTED]'s authority to act for [REDACTED].

3. Whether [REDACTED], who is not an officer of [REDACTED], (a domestic company controlled by the French corporate-[REDACTED]), but who is an officer of [REDACTED], (another domestic corporation which is also controlled by the French corporate-[REDACTED]), has authority to execute a Form 872 on behalf of the taxpayer, [REDACTED], based on a document, signed by [REDACTED] authorizing him to handle tax matters related to [REDACTED].

Answer: Maybe.⁴ This depends on how broad the tax authority delegated to [REDACTED] by the Board of Directors of [REDACTED] is. In this third situation, we have an irregular situation: We have a person, [REDACTED], who is not an officer of the taxpayer, [REDACTED], yet, he is being authorized to act for the taxpayer. We do not feel comfortable with this situation.

[REDACTED] is not a corporate officer of [REDACTED]. Consequently, he can not sign [REDACTED] returns and he does not have any authority, that would be inherent on him, as a [REDACTED]

⁴Note that the question presented in this opinion is, as follows: Given an open statute, whose signature must the Service obtain to protect the revenue? The question is not, as follows: Given an otherwise expired statute, can we defend a waiver for [REDACTED] signed by [REDACTED]? (b)(7)a

(b)(7)a

(b)(7)a

corporate officer, inherent in that position. Therefore, the source of [REDACTED]'s authority to sign consents for the taxpayer, if it exists, must be found elsewhere, namely, in [REDACTED]'s Board of Directors.

A corporation is bound by a waiver executed by an authorized attorney-in-fact. An attorney-in-fact does not need to be an attorney-at-law. While the consent form provides that a corporate officer must sign in the case of a corporate consent, the officer's signature is only required where no authorized attorney signs for the corporation. George Mossie v. Commissioner, T.C. Memo 1974-75, PH TCM ¶ 74075, 33 CCH TCM 394 (1974). [REDACTED] is not an attorney-at-law. He is an accountant, apparently, he is a CPA, but, reportedly, he presently lacks a current permit to practice public accounting. Be that as it may be, [REDACTED] is not purporting to act as either the corporation's attorney-at-law or its properly authorized independent accountant.

At the present time, we do not have a copy of a Board of Directors resolution or corporate minute evidencing that [REDACTED] has been authorized by [REDACTED] Board of Directors to handle its tax matters. [REDACTED] believes that one exists, but he has not seen it, personally. If one exists and it properly authorizes [REDACTED], then, a consent signed by him could be acceptable to the Service. We would need to see that resolution first, before we could opine further on it.

At the present time, we are also unaware of any specific by-law and any specific language in the corporation's by-laws that would allow [REDACTED] as the [REDACTED] of [REDACTED], to authorize [REDACTED], a non-officer, a non-attorney, and a non-licensed CPA, as the corporation's representative for tax matters. Consequently, we do not believe that it is prudent for the Service to rely on the Power of Attorney from [REDACTED], that reads, as follows:

POWER OF ATTORNEY

"[REDACTED], a Delaware corporation the "Company") hereby appoints [REDACTED] as its authorized representative with full power of substitution and revocation, on its behalf to handle tax matters relating to the Company, including, but not limited to, the signing and filing of federal, state, and local tax returns on the Company's behalf."

Dated [REDACTED]

[REDACTED]

By: /Signed/ [REDACTED]

For the Service to know, beyond reasonable question, that [REDACTED] has authority to sign for [REDACTED], the Service would need to be shown a [REDACTED] Board of Director resolution (or, at least properly recorded Board corporate minutes) where the Board directly authorizes [REDACTED] to sign tax consents as attorney-in-fact or, that, authorizes [REDACTED] to delegate his authority to sign consents to [REDACTED] or to whomever [REDACTED] considers appropriate.

Absent a Board of Directors resolution on hand, all that the Service has is a power of attorney from [REDACTED] and [REDACTED], may or may not possess the authority to delegate his own authority to a person who is not a corporate official, attorney-in-law, or properly authorized IRS CPA representative. Given this irregularity, we strongly recommend that you, tactfully, ask [REDACTED] himself, to sign the corporate consent for [REDACTED].

Conclusion

This concludes our legal opinion in this matter, and we are closing our legal advice file. If you have any questions, please contact the undersigned Rogelio A. Villageliu at (312) 886-9225, extension 308. If you present us with a copy of a Board of Directors' resolution authorizing [REDACTED] to act for [REDACTED] and you have any questions with regard to it, we will be happy to address those questions, at that time. Bottom line is that we encourage you to obtain [REDACTED]'s signature for the [REDACTED] consent. If taxpayer will not relent and insists that only [REDACTED] will sign the consent, you need to obtain a copy of the Board of

Directors' resolution giving him that authority, before you can have a reasonable measure of confidence that a consent signed by him for [REDACTED] will withstand a later legal challenge.

RICHARD A. WITKOWSKI
District Counsel

By: *Rogelio A. Villagelio*
ROGELIO A. VILLAGELIO
Special Litigation Assistant

CC:MSR:ILD:CHI:TL-N-2674-99

page 8

CC:District Counsel, Illinois District

CC:Assistant Regional Counsel (TL), MS (Dallas)

CC:Assistant Regional Counsel (Large Case), MS (Chicago)

CC:DOM:FS

CC:District Director, Illinois District
Attention: Former Team Coordinator Irwin Shudnow
originator of request for advice
(for your information only)

a:\[REDACTED]2674-991.wpd